



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/619,737	07/15/2003	Ludmila Cherkasova	200310236-1	7028
22879	7590	01/29/2008	EXAMINER	
HEWLETT PACKARD COMPANY P O BOX 272400, 3404 E. HARMONY ROAD INTELLECTUAL PROPERTY ADMINISTRATION FORT COLLINS, CO 80527-2400			DALENCOURT, YVES	
		ART UNIT	PAPER NUMBER	
		2157		
		NOTIFICATION DATE	DELIVERY MODE	
		01/29/2008	ELECTRONIC	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

JERRY.SHORMA@HP.COM  
mkraft@hp.com  
ipa.mail@hp.com

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/619,737	CHERKASOVA, LUDMILA	
Examiner	Art Unit		
Yves Dalencourt	2157		

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 29 October 2007.

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-28 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-28 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892) 4)  Interview Summary (PTO-413)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948) Paper No(s)/Mail Date. \_\_\_\_.  
3)  Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 5)  Notice of Informal Patent Application  
6)  Other: \_\_\_\_.

## DETAILED ACTION

1. This office action is responsive to communication filed on 10/29/2007.
  
2. In view of the Appeal Brief filed 09/10/2007, PROSECUTION IS HEREBY REOPENED. New grounds of rejection set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

- (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

### *Claim Objections*

3. Claims 1 – 28 are objected to because of the following informalities: It is suggested to delete " it " and " its " in the claims. Appropriate correction is required.

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 17 – 20 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Applicants' specification (paragraph [0104]) discloses that "various elements of embodiments of the present invention for distributing file F from an origin node to recipient nodes are in essence the software code defining the operations of such various elements. The executable instructions or software code may be obtained from a readable medium (e.g., a hard drive media, optical media, EPROM, EEPROM, tape media, cartridge media, flash memory, ROM, memory stick, and/or the like) or communicated via a data signal from a communication medium (e.g., the Internet). In fact, readable media can include any medium that can store or transfer information ". A system as recited in the preamble can explicitly claimed as being a series of code or instructions fro performing functions or can implicitly be a module, a program, and so on. Based on the passage recited above form the specification, such term can be interpreted as hardware, software or a combination thereof. The claim is software per se based on the disclosure since such claims lacking " hardware ".

Therefore, claim 1 is non-statutory.

Claims 18 - 20 are necessarily rejected as being dependent upon the rejection of claim 17.

***Double Patenting***

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 1 – 28 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 - 47 of

copending Application No. 10/345,587 in view of Chung et al (US 20040088380; hereinafter Chung).

7. Claims 1, 22, and 36 of copending Application No. 10/345,587 claim all the limitations, except for at least one recipient node of said first group begins communicating a portion of its respective subfile that it is receiving from the first node to at least one other recipient node of said first group before the at least one recipient node fully receives its respective subfiles.

8. However, Chung teaches an analogous splitting and redundant storage on multiple servers, wherein at least one recipient node of said first group begins communicating a portion of its respective subfile that it is receiving from the first node to at least one other recipient node of said first group before the at least one recipient node fully receives its respective subfiles (paragraphs [0008 – 0009], and [0016]).

9. Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of the instant application by incorporating the idea of having at least one recipient node of said first group begins communicating a portion of its respective subfile that it is receiving from the first node to at least one other recipient node of said first group before the at least one recipient node fully receives its respective subfiles as evidenced by Zayas for the purpose of speeding up the delivery of data stored in files to users, thereby improving reliability, availability, local autonomy, load balancing, and increasing the rate at which data can be delivered.

10. Claims 2 - 16, 18 – 20, and 22 – 28 of the instant application are the same as claims 2 – 21, 23 – 35, and 37 – 47 copending Application No. 10/619,737.

This is a provisional obviousness-type double patenting rejection.

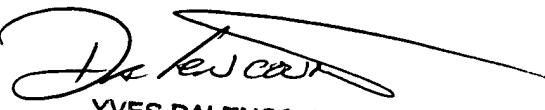
#### Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yves Dalencourt whose telephone number is (571) 272-3998. The examiner can normally be reached on M-TH 7:30AM - 6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571) 272 4001. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

January 15, 2008



YVES DALENCOURT  
PRIMARY EXAMINER  
TECHNOLOGY CENTER 2100